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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 301

GUARANTY TRUST COMPANY OF NEW YORK, EXECUTOR, ESTATE OF LAMAR L. FLEMING, DECEASED, PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 10, 1937.

CERTIORARI GRANTED OCTOBER 11, 1937.

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 78362

GUARANTY TRUST COMPANY OF NEW YORK, Executor, Estate of Lamar L. Fleming, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DOCKET ENTRIES

Appearances:

For Taxpayer: Weston Vernon, Jr. Esq.; Walter D. Fletcher, Esq.

For Comm'r: R. H. Transue, Esq., Harold Allen, Esq., J. W. Smith, Esq.

1935.

Jan. 19. Petition received and filed. Taxpayer notified. (Fee paid)

" 19. Copy of petition served on General Counsel.

Feb. 12. Answer filed by General Counsel.

Feb. 16. Copy of answer served on taxpayer.

Sep. 11. Hearing set Nov. 11, 1935.

Nov. 11. Hearing had before Mr. J. R. Leech, Div. 6. Submitted. Stipulations of facts filed. Petitioner's

[fol. 2] brief due Dec. 2, 1935—respondent's due Dec. 20, 1935—petitioner's reply due Jan. 2, 1936. Notice of appearance of Weston Vernon, Jr. and Walter D. Fletcher, filed.

Nov. 18. Transcript of Nov. 11, 1935 filed.

Dec. 2. Brief filed by taxpayer. 12/2/35 copy served.

Dec. 20. Brief filed by General Counsel.

Dec. 26. Notice of Appearance of Walter D. Fletcher as counsel filed.

1936.

Jan. 9. Motion for leave to file reply brief, reply brief lodged, filed by taxpayer. 1/13/36 granted. 1/21/36 copy served.

Apr. 21. Findings of fact and opinion rendered, J. R. Leech, Div. 6. Decision will be entered under Rule 50.

May 12. Notice of settlement filed by General Counsel.
May 14. Hearing set June 3, 1936 on settlement.
May 29. Computation of deficiency filed by taxpayer. 5/29/36 copy served.
Jun. 3. Hearing had before Mr. Leech on settlement under Rule 50. Not contested.
[fol. 3]
Jun. 4. Decision entered, J. Russell Leech, Div. 6.
Aug. 21. Petition for review by U. S. Circuit Court of Appeals (2) with assignments of error filed by General Counsel.
Aug. 29. Proof of service filed.
Aug. 29. Affidavit of service filed.
Oct. 16. Motion for extension to 12/5/36 to prepare and settle record filed by General Counsel.
Oct. 16. Order enlarging time to 12/5/36 for preparation of evidence and delivery of record entered.
Oct. 17. Præcipe filed with proof of service thereon.
Oct. 23. Præcipe filed with proof of service of præcipe and notice of præcipe filed.

[fol. 4] Before United States Board of Tax Appeals

Docket No. 78362

Guaranty Trust Company of New York, Executor, Estate of Lamar L. Fleming, Petitioner,

against

Commissioner of Internal Revenue, Respondent

Petition

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency. (IT:AR:H-1:FBN-90D) dated October 25, 1934, and as the basis of its proceeding alleges as follows:

1. The petitioner is an executor of the estate of Lamar L. Fleming, deceased; its address is 140 Broadway, New York, N. Y.

2. The notice of deficiency (a copy of which is attached hereto and marked Exhibit "A") was mailed to the petitioner on October 25, 1934.

3. The taxes in controversy are income taxes of the deceased taxpayer for the period from January 1 to December 16, 1933, amounting to $39,874.31.

[fol. 5] 4. The determination of tax set forth in said notice of deficiency is based upon the following errors:

(a) The commissioner erred in determining that there should be included in income of the deceased taxpayer for the period January 1 to the date of the decedent's death on December 16, 1933, not only the decedent's share of the profits of the partnership of Anderson, Clayton & Fleming for the fiscal year August 1, 1932 to July 31, 1933, but also the decedent's share of the profits of the partnership from August 1, 1933, to the date of the decedent's death on December 16, 1933.

(b) The commissioner erred in determining that there should be included in income of the decedent for the prior-to-death period from January 1 to December 16, 1933, the decedent's share of profits earned by such partnership over sixteen and a half months, thus including in income for one taxable period more than one year's income.

(c) The Commissioner erred in failing to determine that the only taxable year of such partnership which ended within the taxable period covered by the prior-to-death return of the decedent, was the fiscal year of such partnership ended July 31, 1933.

(d) The Commissioner erred in determining that there should be included in income for the period prior to the death of a decedent who kept his books and made his income tax returns upon the cash receipts and disbursements basis, amounts neither actually nor constructively received [fol. 6] by the decedent prior to his death and not received by the decedent's representatives during the calendar year in which the decedent died.

(e) The Commissioner erred in determining that there should be included in income of the decedent for the period January 1 to December 16, 1933, the amount of $63,494.46, referred to in the notice of deficiency as the decedent's share of profits of the partnership of Anderson, Clayton & Fleming for the period August 1 to December 16, 1933, and the further amount of $5,509.19 representing interest